

Supreme Court preview: City of Grants Pass v. Johnson

Harvard Law expert Carol Steiker explains how the Eighth Amendment will impact a Supreme Court decision on homelessness

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Signs posted in Oakland, California, calling for occupants to vacate an encampment in the city. Credit: Jane Tyska/Digital First Media/East Bay Times via Getty Images



Carol S. Steiker '86 is the Henry J. Friendly Professor at Harvard Law School.

Are camping bans a legitimate way to tackle the nationwide homelessness crisis — or do they criminalize an unavoidable human need?

On April 22, the United States Supreme Court will hear oral arguments in *City of Grants Pass, Oregon v. Johnson*, a case that challenges a municipality's ability to bar people from sleeping or camping in public areas, such as sidewalks and parks.

Last year, a federal point-in-time survey found more than 653,000 people experiencing homelessness — a 12% increase from 2022, and a record high. As cities and towns across the U.S. struggle to balance compassion with the desire for safe and sanitary public spaces, the Court's decision is sure to impact the rights of both the homeless and the housed.

Whatever the nine justices decide may also upend the long-accepted meaning of the Eighth Amendment's "cruel and unusual punishment" clause, says [Carol S. Steiker '86](#), the Henry J. Friendly Professor at Harvard Law School.

The class action lawsuit involves a group of homeless people who sued an Oregon city for ordinances it passed that make sleeping in public spaces punishable by a civil citation. Because sleep is a physical need, and because Grants Pass has no public shelters for homeless people, the plaintiffs argued, its laws punish their mere existence in the municipality.

The district court, following precedent established in a similar case also in the Ninth Circuit Court of Appeals, held that the plaintiffs satisfied the requirements for a "class," as a group of "involuntary homeless," then issued an injunction preventing the city's homelessness laws from being enforced. The appeals court agreed, writing that Grants Pass would be in violation of the Eighth Amendment were it to enforce its bans "when there was no other place in the City for [homeless persons] to go."

What constitutes "cruel and unusual punishment" under the Constitution is likely to be the focus of the Court's inquiry in the case, says Steiker, who is an expert in capital punishment law.

"The Eighth Amendment is one of the few substantive, as opposed to procedural, limits on what the government can do in punishment," she explains. In other words, she says, it limits what the government can do to someone, rather than how a criminal case must proceed.

As to where those limits lie, Steiker refers to the canonical 1958 case *Trop v. Dulles*, in which the Court struck down the removal of a man's citizenship as punishment for having been convicted of desertion during World War II. Writing for the majority, Chief Justice Earl Warren indicated that the amendment's words are imprecise, but that the administration of justice should reflect the changing norms of the country. "The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society," he wrote.

In 1962, the Supreme Court applied the Eighth Amendment to state criminal courts in *Robinson v. California*. In that case, the Court struck down a California law that made it illegal to be addicted to narcotics.

"Famously, in that opinion, the Court held that the law violated the Eighth Amendment, because it didn't punish any conduct," says Steiker. "It was, instead, a status crime, punishing someone for merely having an addiction in the state of California."

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Whether the Court decides the ordinances in Grants Pass are "cruel and unusual" may therefore come down to whether it believes that the laws are punishing a behavior — camping on public land — or a status, being without a home.

Steiker points to another possible path the Court could take to "thread the needle" between striking down the anticamping ordinances and allowing them to be enforced against anyone at any time.

"The injunction in this case was a class remedy," says Steiker. "It said that anyone who is homeless, in a time and place where there are not enough beds to house all the homeless people, cannot be prosecuted and punished for sleeping in public because, by definition, there are not enough beds for all the homeless people, and therefore the ordinances are criminalizing the status of being homeless."

But in an amicus brief for the United States — in support of neither side — Solicitor General Elizabeth Prelogar '08 advocated for a different analytical approach.

According to the solicitor general, the court of appeals was correct in holding "that the Eighth Amendment prohibits a local government from effectively criminalizing the status of homelessness by completely barring individuals without access to shelter from residing in the jurisdiction." But the brief concluded that the lower court erred in certifying homeless people as a class, rather than examining the individual circumstances of each person to whom the ordinances are applied.

"The argument is that people cannot be punished for sleeping outside if they have no alternative to sleeping outside, but that that should be a case-by-case determination, which is a more fine-tuned individualized approach," says Steiker.

Beyond the decision's impact on homelessness, Steiker worries that the Court could choose to revisit — or even abandon entirely — its Warren Court era "evolving standards of decency" approach to the Eighth Amendment. "It's clear that for at least some originalists on the Court, 'evolving standards of decency' is a travesty, and on their wish list of things to get rid of."

Over the years, the Court has referenced the approach in placing guardrails on how the death penalty can be applied, for example, or in limiting life without parole sentences for juveniles. Jettisoning the 66-year-old precedent could have a "major effect" on the future of capital punishment in the U.S., Steiker says.